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09/870,865	05/31/2001	Stephen A. Lindia	11252-008	8973

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EXAMINER

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3623

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/870,865
Filing Date: May 31, 2001
Appellant(s): LINDIA ET AL.

John F. Letchford
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/6/06 appealing from the Office action mailed 10/17/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6853975

Dirksen et al

2-2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 10-14 and 16-18 are rejected under 35 U.S.C. 102(a and e) as being anticipated by Dirksen et al, US 6,853,975.

As per claim 10, Dirksen et al teaches selecting, by a user of the system, a person whose employment performance the user desires to review but is not obligated to review (column 4, lines 55 – 61 – the users initiate the rating process and select the name of the person they want to rate; when the user is notified that they have been requested to review another person, there is no indication that that person is obligated or required to do so); inputting employee performance review information into the system by the user (column 5 – the ratings information is input into the system by the user); processing employee performance review information input into the system by the user (column 5, lines 1-25 – the information is processed for report preparation); and storing employee performance review information input into the system by the user (column 5, lines 1-25 – the rating data is stored and submitted to an external company for processing).

As per claim 11, Dirksen et al teaches selecting, by the user, at least one of himself, a superior, a peer, a subordinate and a client to review the user's employment performance (column 1, lines 50-53 - the user selects a group of raters who will complete the ratings process).

As per claim 12, Dirksen et al teaches inputting step comprises inputting of said employee performance review information over a communication network (column 3, lines 25-30 – the evaluation information is transmitted over a network).

As per claim 13, Dirksen et al teaches the communication network is in the Internet (column 3, lines 25-30 – teaches the Internet).

As per claim 14, Dirksen et al teaches the communication network is a business enterprise intranet (column 3, lines 33-37 – the intranet is used for access to the rating system).

As per claim 16, Dirksen et al teaches means for requiring approval by the users manager of persons selected by the user to review the user's employment performance and persons selected by the user whose employment performance the user desires to review but has not been nominated to review prior to processing and storage of employee performance review information input into the system by the user (column 3, lines 8-25 – the user submits a list of raters for approval by the manager, upon approval/disapproval, the list is stored on an internal file; when the user proceeds to the performance rating step, inherently the persons the user is rating have been approved since they are listed for selection).

As per claim 17, Dirksen et al teaches means for preloading into the storage means a roster of persons with whom the user has had substantial employment related interaction during a relevant review period, wherein the roster of persons includes that may be selected by the user to review the user's employment performance and persons that may be selected by the user whose employment performance the user desires to review but has not been nominated to review (column 3, lines 8-25 – the user submits a list of raters for approval by the manager, upon approval/disapproval, the list is stored on an internal file; when the user proceeds to the

Art Unit: 3623

performance rating step, inherently the persons the user is rating have been approved since they are listed for selection).

As per claim 18, Dirksen et al teaches entering additional persons into the roster by the user (see figure 1 – there is a rater nomination form that the ratee can update).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dirksen et al, US 6,853,975.

As per claim 15, Dirksen et al does not explicitly teach inputting said employee performance review information by the user while the disconnected from the communication network. However, it is old and well known in the art of communication networks to allow for work to be complete while disconnected from the Internet wherein the information can be stored and communicated over a network when there is a network connection present. This feature allows for convenience to the operator wherein he or she can complete the rating while away from the office.

(10) Response to Argument

In response to Appellant's comments regarding the modification of the rejections under Dirksen in the Final Rejection, Examiner notes that any modification to the rejection was for

Art Unit: 3623

further clarification of the previously cited portions of Dirksen with regard to the amended claims.

Appellant's argument is directed to a feature wherein a person who desires to review the job performance of other persons can do so without obligation to do so. Appellant argues that Dirksen does not permit reviewers to select their reviewees. Appellant claims that since the reviewees of Dirksen nominate reviewers to perform the ratings, that the reviewers are then obligated to carry out the rating process. However, although the reviewers are nominated, there is nothing indicating that those reviewers are then *obligated* to perform the rating of the reviewee. Examiner points out at column 4, lines 55-61, after the rater nominations are submitted, a rater *may* enter the rating system and the rater *may* select from the screen the name of the person he or she wishes to rate, thereby selecting a reviewee. Dirksen does not teach that the reviewers are obligated in any way to carry out the performance rating.

Appellant also argues that, within Dirksen, the nominated rater is duty-bound or obligated to review only the ratees who have nominated him or her to do so. Examiner points out that nowhere in Dirksen is it taught that once a reviewer is nominated that he or she is obligated to carry out the rating duties. Dirksen teaches a rater *may* enter the rating system and the rater *may* select from the screen the name of the person he or she wishes to rate. Appellant points to column 5, lines 12-16 wherein Dirksen teaches "ratings *may* be submitted... thus completing the duties of the rater". Examiner notes that the completion of *duties* does not mean the reviewer is duty-bound. This simply means that once a reviewer decides to rate the reviewee, he or she may submit the ratings thereby completing the *duties* of the rating process.

Art Unit: 3623

Appellant also argues that a rater cannot independently select other persons to review. However, this feature is not in the claims. In addition, Appellant also comments that Dirksen does not disclose that potential raters have the choice to review persons who have nominated them for review. This, however, is not supported in the specification of the instant application.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Johnna Loftis

Conferees:

Tariq Hafiz


SUSANNA M. DIAZ
PRIMARY EXAMINER

Art 3623


Susanna Diaz